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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,352	10/31/2001	Stanley J. Kopecky	112703-207	1356

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EXAMINER

ACKUN, JACOB K

ART UNIT PAPER NUMBER

3712

DATE MAILED: 11/18/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No.	Applicant(s)	
	10/001,352	KOPECKY, STANLEY J.	
	Examiner	Art Unit	
	Jacob K. Ackun Jr.	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 August 2003.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 - * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other:

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas in view of Johnson. Douglas discloses most of the elements of the claims (note especially the Fig 5 embodiment), including the well known folding of the insert, but does not disclose sizing of the housing relative to the insert such that the insert is frictionally held within the housing. Johnson shows that the missing element is conventional (note first column at bottom thereof). It would have been obvious in view of Johnson to size the insert of Douglas relative to the housing thereof (whether or not the insert was also folded), in order to provide a more simple and economical method of retaining the insert within the housing.
3. Applicant's arguments filed 08/25/03 have been fully considered but they are not persuasive. In some instances the examiner simply disagrees with the applicants analysis of the applied prior art. For example it is quite clear to the examiner that Johnson shows that the applicant is not the first to size an insert relative to a housing, so that the insert can be frictionally retained within the housing, the applicant's comments to the contrary notwithstanding. The outstanding rejection is based on one of ordinary skill in the art modifying the package of Douglas in this fashion.

In other instances even when the examiner could agree with the applicant, the applicant's arguments are not commensurate in scope with the scope of the claims. For example, the applicant appears to argue that the compartments of Douglas do not face outwardly. This appears to be fairly easy to see upon review of Douglas, however, the reference was applied in the first office action because no claim required the compartments to face outwardly. Now the applicant

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argues that “claim 1 has been amended to show that the compartment face outwardly”. However, this is not the case. A brief review of claim 1 indicates that what is in fact claimed is that the sections can be folded over against one another with compartments on each section facing outwardly. This limitation does not avoid the prior art because the package thereof is inherently capable of being folded as claimed at the option of a user of the package, although the prior art might not teach use in this manner.

In another example the applicant argues that claim 10 has been clarified to show that the compartments are initially sealed and that the frictional force is created when the compartments are sealed as well as when they are subsequently unsealed. Again, while this may be a teaching or idea that may be gleaned from reading the claim, this is not what is claimed. Claim 10 is directed to a product, not to a method. Method steps in claim 10 do not distinguish the claim over prior art showing the structural elements of the product to which the claim is drawn. Likewise, statements of intended use, such as statements that something is adapted to do something else are unconvincing. Since the prior art discloses the claimed structural elements, it is considered to be inherently capable of all of the claimed functions.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

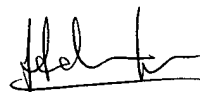
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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (703)308-3867. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703)308-1745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



Jacob K. Ackun Jr.
Primary Examiner
Art Unit 3712

J.A.